

STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES
Before the Director of Insurance and Financial Services

In the matter of:

Rokane Bonner
Petitioner

v

Case No. 12-897-L
Docket No. 12-001833-OFIR

Office of Financial and Insurance Regulation
Respondent

Issued and entered
this 14 day of April 2013
by Randall S. Gregg
Special Deputy Director

FINAL DECISION

I. BACKGROUND

This case concerns the application of Rokane Bonner (Petitioner) for a resident insurance producer license filed with the Office of Financial Insurance Regulation¹. The license was denied because the Petitioner was convicted of a felony in 1992; and, because the Petitioner made a false entry on his insurance producer license application.

Petitioner challenged the license denial. An order for a contested case hearing was issued November 19, 2012. Respondent filed a motion for summary decision. A hearing on the motion was held on January 29, 2013. The Petitioner did not attend the hearing. On January 31, 2013, the administrative law judge issued a Proposal for Decision (PFD) granting Respondent's motion and recommending that the license denial be upheld.

The Petitioner did not file exceptions to the PFD. Michigan courts have long recognized that the failure to file exceptions constitutes a waiver of any objections not raised. *Attorney General v. Public Service Comm* 136 Mich App 52 (1984).

The PFD is attached. With one exception, the findings and recommendation in the PFD are adopted and made a part of this final decision.

The conclusion of law on page 4 of the PFD regarding the burden of proof is not adopted. The PFD indicates that the Respondent "has the burden of proof in this matter to show by a preponderance of the evidence the legal action to deny Petitioner's application for licensure."

¹ Pursuant to Executive Order 2013-1, the Office of Financial and Insurance Regulation is now known as the Department of Insurance and Financial Services. During the pendency of this case all authority, powers, duties, functions, and responsibilities of the Commissioner of the Office of Financial and Insurance Regulation were transferred to the Director of the Department of Insurance and Financial Services. See Executive Order 2013-1, effective March 18, 2013.

The Petitioner requested a hearing. The Petitioner did not challenge the evidence of the existence of a conviction. Rather, he asserted in his hearing request that his conviction was set aside, expunged, dismissed or otherwise cleared and that the conviction was deferred or otherwise not entered pending completion of probation or community service. As the party asserting facts which would support his request for a license, the Petitioner has the burden of proof in establishing those facts. The administrative law judge was in error in asserting that the Respondent had the burden of proof. That portion of the PFD is, therefore, not adopted.

II. FINDINGS OF FACT

Sections 1239(1)(a) and (f) of the Michigan Insurance Code, MCL 500.1239(1)(a) and (f), provide:

(1) In addition to any other powers under this act, the commissioner...shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application.

* * *

(f) Having been convicted of a felony.

The Petitioner was convicted of a felony and falsely stated on his insurance producer application that he had no criminal convictions.

III. CONCLUSIONS OF LAW

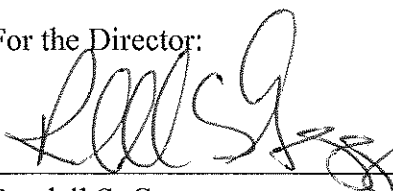
The Petitioner's felony conviction and his false statement on his insurance producer application preclude the Petitioner receiving an insurance producer license.

IV. ORDER

The refusal to issue an insurance producer license to Rokane Bonner is upheld.

R. Kevin Clinton
Director

For the Director:



Randall S. Gregg
Special Deputy Director

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

OFIR/OGC

IN THE MATTER OF:

Docket No.: 12-001833-OFIR

Rokane Bonner,
Petitioner

Case No.: 12-897-L

v

Agency: Office of Financial &
Insurance Regulation

Office of Financial and Insurance
Regulation,
Respondent

Case Type: OFIR/OFIS-Insurance

Filing Type: Sanction
License Denial

Issued and entered
this 31st day of January 2013
by Lauren G. Van Steel
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This proceeding under the Michigan Insurance Code of 1956, being 1956 PA 218, as amended, MCL 500.100 *et seq.* (hereafter "Insurance Code"), commenced with the issuance of a Notice of Hearing dated November 19, 2012, scheduling a contested case hearing for January 2, 2013. The Notice of Hearing was issued pursuant to a Request for Hearing received by the Michigan Administrative Hearing System on November 8, 2012, and an Order Referring Petition for Hearing and Order to Respond dated October 30, 2012, issued by Annette E. Flood, Chief Deputy Commissioner of the Office of Financial and Insurance Regulation.

Attached to the Request for Hearing was a copy of a Notice of License Denial and Opportunity for Hearing, dated May 31, 2012, a copy of the Applicant's Petition for Contested Case Hearing to Appeal Agency Denial of Application for Insurance Producer License, received June 28, 2012; and Respondent's Motion for Summary Decision and Brief in Support, dated November 8, 2012.

On November 29, 2012, the undersigned issued an Order for Adjournment and Scheduling Hearing on Motion for Summary Decision. On December 7, 2012, Respondent submitted a Motion to Adjourn Hearing. On December 19, 2012, the undersigned issued an Order Granting Adjournment, rescheduling the hearing on the motion to January 29, 2013. The Order Granting Adjournment was sent with Proof of Service to Petitioner at his last known address of record.

On January 29, 2013, the hearing was held as scheduled. Conrad L. Tatnall appeared as staff attorney on behalf of Respondent. Neither Petitioner, nor an attorney on his behalf, appeared at the hearing.

The undersigned ruled that the hearing would proceed in Petitioner's absence pursuant to Section 72(1) of the Administrative Procedures Act (hereafter "APA"), which states:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.72(1).

Respondent's attorney presented oral argument on the Motion for Summary Decision. The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent's Exhibit No. 1 is a copy of certified court documents showing a felony conviction of Rokane Bonner (Petitioner) by guilty plea in the Municipal Court of California, Santa Clara County Judicial District Court, dated May 14, 1992.
2. Respondent's Exhibit No. 2 is a copy of an Individual Licensee Application submitted online by Petitioner on February 13, 2012.
3. Respondent's Exhibit No. 3 is a copy of a Notice of License Denial and Opportunity for Hearing in the matter of Rokane Bonner (Petitioner), signed by Jean M. Boven, Deputy Commissioner, dated May 31, 2012.

The undersigned granted Respondent's Motion for Summary Decision on the record. In addition, Respondent's attorney requested that a default be granted against Petitioner pursuant to Section 78(2) of the APA, which states:

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.78(2).

In accordance with Section 78(2) of the APA, a default was granted in Respondent's favor, against Petitioner. Pursuant to the default, the allegations set forth in the Notice of License Denial (Respondent's Exhibit No. 3) were taken as true and proven. No witnesses were presented. The record was closed at the conclusion of the hearing.

ISSUES AND APPLICABLE LAW

The issue now presented is whether summary decision has been properly granted for Respondent on Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code. These statutory sections

provide in pertinent part:

Sec. 1205. (1) A person applying for a resident insurance producer license shall file with the commissioner the uniform application required by the commissioner and shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following: * * *

(b) Has not committed any act listed in section 1239(1).
MCL 500.1205(1)(b). (Emphasis supplied).

Sec. 1239. (1) In addition to any other powers under this act . . . the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes: * * *

(f) Having been convicted of a felony. MCL 500.1239(1)(f).
(Emphasis supplied).

FINDINGS OF FACT

Based on the entire record in this matter, including the pleadings and default granted for Respondent, the following findings of fact are established:

1. On or about February 13, 2012, Rokane Bonner, Petitioner herein, submitted an Individual Licensee Application online to become licensed as a resident insurance producer in the state of Michigan. [Resp. Exh. 2].
2. Petitioner responded "no" on the Individual Licensee Application to a question asking whether he had ever been convicted or charged with a crime. [Resp. Exh. 2].
3. In answering "no" to the question described, Petitioner provided misleading information on the Individual Licensee Application and has attempted to obtain a resident insurance producer license through misrepresentation, and has been convicted of a felony. [Resp. Exh. 1 & 3].
4. A certified copy of court records admitted into evidence in this matter shows that on May 14, 1992, Petitioner pled guilty and was convicted of felony "inflict[ion] of corporal injury on spouse/cohabitant" in Santa Clara County (California) Judicial District Court. [Resp. Exh. 2].

5. On May 14, 1992, Petitioner was sentenced by the Santa Clara County Judicial District Court to 46 days in the county jail and completion of a domestic violence program. [Resp. Exh. 2].
6. On May 31, 2012, Jean M. Boven, Deputy Commissioner for Respondent, issued a Notice of License Denial and Opportunity for Hearing. [Resp. Exh. 3].
7. On June 28, 2012, Petitioner submitted a petition for contested case hearing to appeal the Notice of License Denial. [Applicant's Petition dated June 26, 2012].
8. On November 8, 2012, Respondent filed a Motion for Summary Decision and Brief in Support along with a Request for Hearing.
9. By Order issued on November 29, 2012, the undersigned Administrative Law Judge allowed Petitioner until December 14, 2012, to file a written response to Respondent's Motion for Summary Decision. [Order for Adjournment and Scheduling Hearing on Motion for Summary Decision, dated November 29, 2012].
10. To date, Petitioner has not filed a written response to Respondent's Motion for Summary Decision.
11. On January 29, 2013, a properly noticed hearing was held, at which Petitioner failed to appear to address Respondent's Motion for Summary Decision or to offer evidence in support of his appeal.
12. Respondent's Motion for Summary Decision was granted on the record at the hearing held on January 29, 2013, and a default ruling entered against Petitioner.

CONCLUSIONS OF LAW

Respondent has the burden of proof in this matter to show by a preponderance of the evidence the legal basis for its action to deny Petitioner's application for licensure. See MCL 500.1239(2). Under Sections 1205 and 1239 of the Insurance Code, *supra*, the Commissioner shall deny an application for a resident insurance producer license where an applicant has been convicted of a felony. See MCL 500.1205(1)(b) and MCL 500.1239(1)(f), as amended by 2008 PA 422 & 423, which amendments became effective on January 6, 2009, prior to the license application at issue here.

A default having been granted for Respondent against Petitioner under Section 78(2) of the APA, the allegations set forth in the Notice of License Denial are taken as true and proven. Under Section 72 of the APA, there is no requirement to provide a full evidentiary hearing when all the alleged facts are taken as true. *Smith v Lansing School Dist.*, 428 Mich 248; 406 NW2d 825 (1987).

Under Rule 11(c), summary decision may be granted where there is no genuine issue as to any material fact and the moving party is therefore entitled to a decision in that party's favor as a matter of law. 1983 AACRS, R 500.2111(c).

Based on the above findings of fact, it is concluded that Respondent has shown that there is no genuine issue as to any material fact concerning Petitioner's felony conviction and that it is entitled to a decision in its favor as a matter of law. Further, a preponderance of the evidence shows that Petitioner was properly denied licensure as a resident insurance producer in the state of Michigan under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code.


PROPOSED DECISION

Based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge proposes the following to the Commissioner:

1. That the above findings of fact and conclusions of law be adopted in the Commissioner's final decision and order, including the summary decision ruling in Respondent's favor;
2. That the Commissioner deny Petitioner's application for a resident insurance producer license under Sections 1205(1)(b) and 1239(1)(f) of the Insurance Code; and
3. That the Commissioner take any other action in this matter deemed appropriate under applicable provisions of the Insurance Code.

EXCEPTIONS

Any Exceptions to this Proposal for Decision should be filed in writing with the Office of Financial and Insurance Regulation, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty (20) days of the issuance of this Proposal for Decision. An opposing party may file a response within ten (10) days after Exceptions are filed.



Lauren G. Van Steel
Administrative Law Judge